

14214

03944

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

J. L. Caylor
Page I

FILE: B-189836

DATE: October 20, 1977

MATTER OF: Sacramento Metropolitan Refuse Co.

DIGEST:

Protest alleging ambiguous and restrictive specifications and improper bond requirements is untimely where basis for protest was apparent from IFB but protest was not filed until after bid opening.

Sacramento Metropolitan Refuse Co. (SMRC) protests the award of a contract to U. S. Eagle, Inc., under invitation for bids (IFB) No. F04612-77-B-0003 issued by Mather Air Force Base for refuse collection services for fiscal year 1978 with an option to renew the contract in fiscal years 1979 and 1980.

Bids were opened on July 26, 1977. U. S. Eagle, Inc., was the low bidder and has been awarded the contract. SMRC protested by letter dated August 2, 1977, on grounds that the use of the identical caption "Bid Guarantee" to head each of two different clauses contained in section "C" of the IFB created an ambiguity; that the IFB required payment, performance and bid bonds although contracts of the type solicited are allegedly exempted from such bonds by the Miller Act, 40 U.S.C. §§ 270a-270d (1970); and that the Government inappropriately used information supplied by the incumbent contractor to develop restrictive IFB specifications requiring trucks having a specific cubic yard capacity. The latter objection appears to have been rendered moot by the May 24, 1977, amendment of the IFB which removed the specific restriction on the size and type of truck required.

In any event, our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1977), require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening shall be filed prior to bid opening. Because the protest was not filed prior to the bid opening, the protest is untimely and will not be considered on the merits.

for *Milton J. Dembling*
Paul G. Dembling
General Counsel